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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,534	11/20/2003	Robert Farrer Gilmour	4504-1068	6887

466 7590 09/21/2005

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EXAMINER
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ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/716,534

Applicant(s)

GILMOUR, ROBERT FARRER

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>response to argument</u>               |

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***Response to Arguments***

1. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Regarding claim 12, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hely US Patent 5,506,746 in view of Miklaus et al. US Patent 5,209,722.***

As to claim 1, Hely discloses a foot and ankle support comprising all claimed limitation except for "two aperture"/"a pair of aperture". However, at the time of the invention flaps having a pair of aperture to draw straps through were known in the art. Miklaus et al. teaches an orthopedic foot/ankle support in figure

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1 with a pair of flap (46, 48) each having a pair of aperture (84,86,90, and 94) to secure the flaps with straps 70 and 104. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the flap of Hely in view of Miklaus et al. in order to include a pair of aperture for the purposes of securing the two flaps to the ankle by drawing straps through the aperture.

**As to claim 2, Hely discloses** a foot and ankle support as claimed in claim 1, wherein the side flaps having inner and outer surfaces, **however does not disclose** the first strap and the inner and outer surfaces having part fastening means thereon to enable the strap to be secured to the inner surface of one side flap, passed through the aperture in that side flap, looped through the aperture in the other side flap and be secured on the outer surface of the first mentioned side flap. **As to claim 2, Miklaus et al. teach** an orthopedic ankle and foot support brace comprising inner (see fig.1 reference object 50) and outer (see fig.1 reference object 30) surfaces of a medial/lateral strut where the first strap(s) (see fig. 1 reference objects 70 and 72) having part fastening means (Velcro attachment on the back of the straps) thereon to enable the strap to be secured to medial/lateral strut, passed through the aperture (see fig.1 reference objects 84,88) in the medial/lateral strut, looped through the aperture in the other side medial/lateral strut on the parallel side and be secured on the outer surface of the first mentioned medial/lateral side (see col.5 lines 34-59). Hely's laces are considered an alternative means of securing the two flaps together.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the laces of Hely in view of Miklaus et al. in order to provide the ankle strap with fastening means thereon to enable the strap to be secured to the inner surface of one side flap, passed through the aperture in that side flap, looped through the aperture in the other side flap and be secured on the outer surface of the first mentioned side flap for the purposes of securing and pulling the flaps together to further support the foot near the metatarsal region.

**As to claim 6, Hely does not disclose** a foot and ankle support as claimed in claim 1, wherein the first strap or straps can be positioned at a selected angle to the flap. As to claim 6, applicant is directed to clarify what the applicant meant by "at a selected angle". Examiner assumes by "selected angle" applicant means strap can be positioned at different locations, i.e. one at the upper and one at the lower part of the flap.

**As to claim 6, Miklaus et al. teach** an orthopedic ankle and foot support brace comprising first strap(s) (see fig. 1 reference objects 70 and 72) (positioned at a different location along the foot support brace) having part fastening means (Velcro attachment on the back of the straps) thereon to enable the strap to be secured to medial/lateral strut (see col.5 lines 34-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the laces of Hely in view of Miklaus et al. in order to provide the ankle strap positioned at a selected angle to the flap for the purposes of securing the flap to the user's foot.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30 am-4:30 pm.

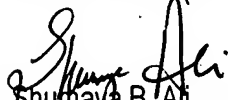
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

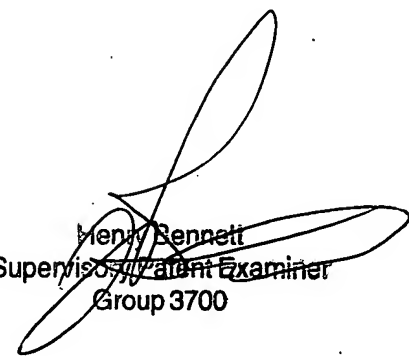
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at

866-217-9197 (toll-free).

  
Shumaya B. Ali  
Examiner  
Art Unit 3743  
9/19/05

  
Henry Bennett  
Supervisor/ Patent Examiner  
Group 3700